DOCUMENT RESUME

ED 379 205 SO 024 782

AUTHOR	Leming, Robert S.
TITLE	Teaching about Landmark Dissents in United States Supreme Court Cases. ERIC Digest.
INSTITUTION	ERIC Clearinghouse for Social Studies/Social Science Education, Bloomington, IN.
SPONS AGENCY	Office of Educational Research and Improvement (ED), Washington, DC.
REPORT NO	EDO-SO-95-1
PUB DATE	Jan 95
CONTRACT	RR93002014
NOTE	4p.
AVAILABLE FROM	ERIC Clearinghouse for Social Studies/Social Science Education, 2805 East Tenth Street, Suite 120, Bloomington, IN 47408.
PUB TYPE	Information Analyses - ERIC Clearinghouse Products (071)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	*Constitutional History; *Court Judges; *Court Litigation; Curriculum Development; Decision Making; *Dissent; Elementary Secondary Education; *History Instruction; *Opinions; Resource Materials; Social Studies; Teaching Methods
IDENTIFIERS	Betts v Brady; ERIC Digests; Minersville School District v Gobitis; Olmstead v United States; Plessy v Ferguson; *Supreme Court

ABSTRACT

This ERIC digest discusses the use of dissenting U.S. Supreme Court decisions in teaching about U.S. constitutional history. for most of its history, the U.S. Supreme Court has issued a single opinion indicating its decision in a case. The Court disposes of each case it reviews by majority rule (either affirming or reversing) and provides a rationale for its decision. The disposition and rationale are both critical elements of the Court's decision. In providing reasons for its decision, the Court may offer constitutional interpretations that have a significant impact on U.S. law and society. In cases where some justices do not agree completely with the Court's decision, they may write or join concurring and dissenting opinions. In "concurring" opinions, justices agree with the majority regarding the outcome of the case, but disagree in some way with the reasons that support the outcome. In "dissenting" opinions, justices disagree with the outcome of the case and present rationales for their views. Justices offer reasons for their decisions based on their understanding of law, history, and policy. Unlike the Court's majority opinions, dissents have no legal force. They can, however, encourage federal legislation to reverse or limit the Court's decision. They may influence the Court in future decisions. This ERIC digest focuses on four exceptional cases, in which dissents have attained landmark status in U.S. legal history in that they influenced subsequent reversals by the Court or have come to articulate revised opinions of the Court. (Author/DK)

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U.S. DEPARTMENT OF EDUCATION
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ERIC Digest EDO-SO-95-1

January 1995

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by Robert S. Leming

Since the Marshall Court in the early nineteenth century, the U.S. Supreme Court has issued a single opinion indicating its decision in a case. The Court disposes of each case it reviews by majority rule (typically either affirming or reversing) and provides a rationale for its decision. The disposition and rationale are both critical elements of the Court's decision. In providing reasons for its decision, the Court may offer constitutional interpretations which have a significant impact on American law and society. Moreover, what often makes Court cases compelling as human drama is that they typically involve real people engaged in disputes which have been brought to the justice system for resolution. This is the "disposition" of a case.

In cases where some justices do not agree completely with the Court's decision, they may write or join concurring and dissenting opinions. In "concurring" opinions, justices agree with the majority regarding the outcome of the case, but disagree, in some way, with the reasons that support the outcome. In "dissenting" opinions, justices disagree with the outcome of the case and present rationales for their views. Justices offer reasons for their decisions based upon their understanding of law, history, and policy.

Unlike the Court's majority opinions, dissents have no legal force. Typically, they simply provide justices disagreeing with the majority an opportunity to express their dissatisfaction with the outcome and explain their disagreement. Nevertheless, dissenting opinions can have a greater impact. For instance, they might encourage federal legislation to reverse or limit the Court's decision. Moreover, dissenting justices may hope to influence, ultimately, the Court itself in future decisions. While the Court typically follows its own precedents in deciding cases (under the established judicial principle of *stare decisis* or "let the decision stand" in Latin), it has, on occasion, overturned or significantly modified its own earlier decisions. In exceptional cases, dissents have attained landmark status in American legal history in that they influenced subsequent reversals by the Court or otherwise have come to articulate revised opinions of the Court on significant matters of constitutional interpretation and public policy.

Infusion of Landmark Dissents into the Curriculum. Landmark dissents, those which influenced subsequent Court decisions, should be included prominently in United States history and government courses. Notable examples are the dissenting opinions in *Plessy* v. *Ferguson* (1896), *Olmstead* v. *United States* (1928), *Minersville School District* v. *Gobitis* (1940), and *Betts* v. *Brady* (1942).

One of the most influential dissents was crafted by Justice John Marshall Harlan in the 1896 case of *Plessy* v. *Ferguson*. Homer Plessy, acting on the behalf of a Louisiana Citizen's Committee formed to protest laws established to keep blacks and whites separate, bought a first-class ticket on a Louisiana train. Plessy, who had one great-grand parent of African descent, boarded the train and sat in a railroad car reserved for whites only, ignoring the coach marked "colored only." After refusing to change seats, Plessy was arrested for violating the Separate Car Law requiring separate railroad seating for blacks and whites.

The central issue in this case involves the question of whether or not the state law requiring separate railroad accommodations violated the 13th Amendment's outlawing of slavery or the 14th Amendment's guarantee of equal protection of the laws for all citizens. The Supreme Court ruled against Plessy, holding that the "equal protection of the laws" clause of the 14th Amendment allowed "separate but equal" facilities for blacks. The Court also ruled that the Separate Car Law did not violate the 13th Amendment's ban on slavery.

The lone dissent in *Plessy* was written by Justice John Marshall Harlan who wrote, "But in view of the Constitution, in the eye of the law, there is in this country no superior class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law." Justice Harlan, who had been a slave owner from Kentucky, warned future generations against the evils of giving a legal sanction to class distinctions.

In 1954 the Court, in line with Justice Harlan's dissent, finally ended over 50 years of "separate but equal" legislation with the *Brown* v. *Board of Education* ruling which struck down laws that enforced racial segregation in public schools.

In the 1928 U.S. Supreme Court case of *Olmstead* v. *United States*, decided by a 5-4 vote, Justice Louis Brandeis's dissenting opinion argued for a constitutional right to privacy and warned future generations about the advancement of technology and its possible intrusion into constitutionally protected areas. In 1924, Mr. Ralph Olmstead stood accused of violating the Volstead Act which outlawed the transportation or sale of alcoholic beverages anywhere in the United States. The evidence against Olmstead was gathered through the use of electronic wire-tapping of Olmstead's office and home. Olmstead claimed his Fourth and Fifth Amendment rights had been violated. Olmstead believed the search of his house and office was illegal and that his conversations should not be used to self-incriminate him in court. The U.S. Supreme Court, however, did not agree with Olmstead. Chief Justice William Howard Taft argued that the search of Olmstead's property did not violate the Fourth Amendment's protection against unreasonable searches and seizures because the police did not physically enter Olmstead's house or office and

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seize physical evidence. Rather, the police overheard telephone conversations over "...wires reaching into the whole world from the defendant's house or office."

Justice Louis Brandeis, one of four justices dissenting in this case wrote, "The progress of science in furnishing the Government with means of espionage is not likely to stop with wire-tapping. Ways may some day be developed by which the Government, without removing papers from secret drawers, can reproduce them in court, and by which it will be enabled to expose to a jury the most intimate occurrences of the home." Justice Brandeis further argued that the "right to be let alone" was the most important right available to mankind.

Forty years later the U.S. Supreme Court embraced Brandeis's opinion in the 1967 *Katz* v. *United States* case which overturned the *Olmstead* decision. The *Katz* decision (7-1) concluded that wiretaps and other types of electronic surveillance were unconstitutional because they violate an individual's right to be protected against unreasonable searches and seizures.

In 1940, the Court decided the case of *Minersville School District* v. *Gobitis*, which upheld a flag salute requirement for students attending a public school. Two students, Lillian and William Gobitis, were members of the Jehovah's Witnesses faith, which believed that saluting the flag was a crime against God. They were expelled from school for not saluting the American flag. The Court, in its 8-1 decision, argued that religious freedoms must yield to state authority as long as the state was not directly restricting or promoting religion. Justice Harlan Fiske Stone dissented, arguing that religious freedom was outside the jurisdiction of the government. Three years later, in a 6-3 decision, the Court reversed itself in *West Virginia State Board of Education* v. *Barnette*. The decision was reversed, in part, because Justice Stone had become the Chief Justice and two new members had joined the Court.

In 1942, Justice Hugo Black dissented in the *Betts* v. *Brady* case, decided 6-3, by arguing that defendants in state courts should have the same right to counsel that defendants do in federal courts. Justice Black's dissent relied on his own opinion in an earlier case, *Johnson* v. *Zerbst* (1938), when he wrote, "The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides are lost, justice will not 'still be done.' It embodies a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty." The Court, however, rejected Black's argument, refusing to extend the right of counsel to defendants in noncapital felony cases at the state level.

Justice Black's opinion became the majority view in 1963 when the Court overturned *Betts* in *Gideon* v. *Wainwright* in a 9-0 decision. In *Gideon* the Court ruled that the Sixth Amendment, as applied to the states by the Fourteenth Amendment, required that indigent defendants charged with serious offenses in state criminal trials must be represented by counsel.

Instructional Strategies for Teaching Dissents. A moot court simulation is a very exciting method that involves students in a role play of the United States Supreme Court. Students are exposed to the opinions developed by the Supreme Court Justices and are given the opportunity to develop their own arguments and express them in written and oral forms. A moot court simulation allows for historical connections to be made between cases and their effect on the American judicial system and American society.

Another effective instructional strategy is the case study method, in which students are encouraged to carry out the following steps: review the background information and the facts; determine the main issue(s); examine different arguments on the issue; consider the decision (with majority and minority opinions) and legal reasoning; and assess the implications and historical significance of the case.

References and ERIC Resources. The following list includes references used to prepare this Digest. The items followed by an ED number are available in microfiche and/or paper copies from the ERIC Document Reproduction Service (EDRS). For information about prices, contact EDRS, 7420 Fullerton Road, Suite 110, Springfield, Virginia, 22153-2842; telephone numbers are (703) 440-1400 and (800) 443-3742. Entries followed by an EJ number, announced monthly in the CURRENT INDEX TO JOURNALS IN EDUCATION (CIJE), are not available through EDRS. However, they can be located in the journal section of most libraries by using the bibliographic information provided, requested through Interlibrary Loan, or ordered from the UMI reprint service.

Cortner, Richard, et al. THIS HONORABLE COURT: TEACHER'S GUIDE. Arlington, VA: Greater Washington Educational Telecommunications Association, Inc., 1988. ED 298 025.

Hickey, M. Gail. "Mock Trials for Children." SOCIAL EDUCATION 54 (January 1990): 43-44. EJ 404 424.

"Judicial Review—How Judges Decide." UPDATE ON LAW-RELATED EDUCATION 14 (Winter 1990): 27-30. EJ 409 545.

Long, Gerald P. CONSTITUTIONAL RIGHTS OF JUVENILES AND STUDENTS: LESSONS FROM 16 SUPREME COURT CASES. Bloomington, IN: ERIC/ChESS, 1994. ED number will be assigned.

Page, Melvin, et al. "From *Plessy* to *Brown*." UPDATE ON LAW-RELATED EDUCATION 15 (Fall 1991): 12-13. EJ 450 750.

Patrick, John J. THE YOUNG OXFORD COMPANION TO THE SUPREME COURT OF THE UNITED STATES. New York: Oxford University Press, 1994. ED 368 670.

Roach, Carol. "A Famous Kansas Child." UPDATE ON LAW-RELATED EDUCATION 14 (Winter 1990): 45-47. EJ 409 549.

Wolcott, Lisa. "Their Day in Court. Students Learn about America's Legal System by Taking Part in It." TEACHER MAGAZINE 2 (March 1991): 24, 29. EJ 427 831.

This publication was prepared with funding from the Office of Educational Research and Improvement, U.S. Department of Education, under contract RR93002014. The opinions expressed do not necessarily reflect the positions or policies of OERI or ED.

This Digest was produced jointly by ERIC/ChESS and the Adjunct ERIC Clearinghouse for Law-Related Education, a project of the American Bar Association's National Law-Related Education Resource Center.